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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 04 CR 609
)	06 C 1231
VITO BARBOSA,)	
)	
Defendant. ¹)	

MEMORANDUM ORDER

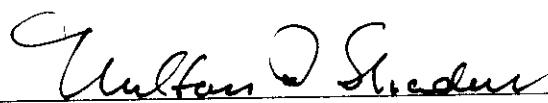
Vito Barbosa ("Barbosa") has filed his Motion To Vacate Minute Order, seeking to undo the earlier designation of his Motion for Return of Property ("Motion") as a civil action, with the concomitant imposition of a \$39 filing fee. Barbosa has done his work well, and he is entitled to the relief that he seeks.

To that end Barbosa has correctly cited Okoro v. Callaghan, 324 F.3d 488, 490-91 (7th Cir. 2003), which both (1) states the ground rules as to such motions for the return of property and (2) cites earlier cases confirming those ground rules. Okoro, id. at 490 expressly characterizes a Fed. R. Crim. P. ("Rule") 41(g) claim for the return of unlawfully seized property as an ancillary proceeding to the underlying criminal case, and it

¹ When Vito Barbosa originally filed his Motion for Return of Property, he listed himself as "Petitioner" and the United States as "Respondent" and captioned his filing "Barbosa v. United States of America," rather than in the manner employed in this memorandum order. No doubt that designation contributed to what appears to have been an error in the handling of the matter by the Clerk's Office as reflected in this memorandum order, although that does not of course excuse the error itself.

further states that any such claim "may be brought after the defendant's conviction, as well as before." And consistently with that holding, Barbosa's original Motion asserts that the property that he wants returned was indeed seized illegally, with the government having no legitimate predicate for its retention.

Accordingly this Court (1) grants Barbosa's current motion to vacate the March 8, 2006 minute order that was inconsistent with the Okoro teaching, (2) strikes Case No. 06 C 1231 from the civil docket and (3) retains Barbosa's original Motion under criminal Case No. 04 CR 609 pursuant to Rule 41(g). Because any such Rule 41(g) motion, rather than a newly-filed civil case, need not allow the government the extended time frame that is permitted for responsive pleadings in civil actions against the United States, the United States is ordered to respond to the Motion on or before April 10, 2006. This Court will promptly determine what further proceedings are necessary.²


Milton I. Shadur
Senior United States District Judge

Date: March 28, 2006

² This new timetable also calls for vacating the minute order that had been entered on March 8, setting an extended schedule for an initial status hearing. That minute order is vacated as well.